

MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
March 19, 2007, at 9:00 a.m.
DEQ Building, Room 111
1520 E. Sixth Avenue
Helena, Montana

PRESENT: Lt. Governor John Bohlinger, State Auditor John Morrison, Secretary of State Brad Johnson, Attorney General Mike McGrath and Superintendent of Public Instruction Linda McCulloch

Mr. Johnson moved for approval of the minutes from the February 20, 2007, meeting of the Board of Land Commissioners. Seconded by Mr. McGrath. Motion carried unanimously.

BUSINESS CONSIDERED:

1206-1 DoC: FINAL APPROVAL OF LAND PURCHASE FOR MALTA DINOSAUR MUSEUM

Ms. Sexton said the Department of Commerce is very pleased to bring this forward for final approval. This comes from HB 423 which passed the 2005 legislature and appropriated \$500,000 to the Department of Commerce to purchase land and construct a museum in Malta to display the products of paleontological research in the area. The Board gave preliminary approval at its December 2006 meeting. The Department of Commerce will sign an agreement for the purchase of the proposed museum property. Title insurance has been issued, Phase I of the Environmental Site Assessment has been completed, an Environmental Assessment (EA) has been completed, and the Dept. Commerce has prepared an environmental finding under MEPA following review of the EA. The Dept. Commerce concluded that the project would not be a major action significantly affecting the quality of the human environment for the purposes of MEPA. CIVIC Design of Great Falls has completed the Preliminary Architectural Report for the museum. The Dept. of Commerce requests final approval from the Board to purchase Karl and Janice Harms' property. The project is ready to proceed with final design and construction upon approval by the Board.

Dave Cole, Department of Commerce Community Development Division Administrator, said I have been working with the members of the Judith River Foundation in Malta on this project. The Board provided preliminary approval of the site purchase, we have completed the basic due diligence, I have provided a copy of the property survey and we have determined there will be no encroachment issue. We have completed a HazMat evaluation of the site and determined it is not suffering from contamination in any way. The property owners completed a demolition of their floral shop and green houses last Friday. If the Board approves this, we are ready to go to work, in fact, our director Tony Preite will be in Malta tomorrow to sign the papers.

Motion was made by Mr. McGrath to grant final approval to purchase the site for the Great Plains Dinosaur Museum in Malta. Seconded simultaneously by Mr. Morrison and Mr. Johnson. Motion carried unanimously.

307-1 TRANSFER OF GLENDIVE ARMORY TO DAWSON COUNTY §77-2-351, MCA

Ms. Sexton said the Board has seen this before, it is for the transfer of the Glendive Armory property to Dawson County for use as a county shop and county offices. Dawson County has expressed interest in acquiring this and they have agreed to pay the financial liability the Dept. of Military Affairs has with the federal government, about \$50,000. This will fall under the §351 transfer guidelines after the EA is complete. The request today is for preliminary approval to transfer the property under §351 rather than go to public auction. Dawson County is supportive of this, and the Dept. Military Affairs recommends preliminary approval of the §351 transfer.

Motion was made by Mr. Johnson to approve the transfer of property from the Dept. Military Affairs to the County of Dawson. Seconded by Mr. Morrison. Motion carried unanimously.

307-2 WILLOW CREEK TIMBER SALE

Ms. Sexton said this proposed sale is located SE of Anaconda, and includes 196 acres in five harvest units. The sale volume will be about 1,463 MBF with an estimated minimum bid value of \$212,185.00. The sale would primarily salvage lodgepole pine killed by the Mountain Pine Beetle. Twenty acres have been identified as an aspen enhancement area where the prescription is designed to promote and enhance aspen regeneration to provide diversity within the project area. There is no old growth timber involved. There is an existing county road that accesses the property and it has BMP and water quality issues. There will be a relocation and restoration of 600 feet of the county road which will improve access. The work will be done by Deer Lodge County in cooperation with the Anaconda Job Corps. Road work within the state section would be done by the purchaser as part of the sale. Fisheries may be improved because of the mitigation measures. There was no opposition to this sale. Ms. Sexton recommended approval.

Motion was made by Ms. McCulloch to approve the Willow Creek Timber Sale. Seconded by Mr. McGrath. Motion carried unanimously.

307-3 BAKER DRAW SALVAGE TIMBER SALE

Ms. Sexton said this proposed sale is the last of our salvage timber sales from the east side fires, this one is from the Jungle Fire and is located 23 miles SW of Big Timber, Montana. The estimated volume is 1,955 MBF of sawlogs with an estimated minimum bid value of \$110,000. The proposed sale is located on 234 acres, and there is no old growth. Access is granted through the Beaver Meadows Ranch on existing roads. With this sale the state will have met about 70% of its sustained yield for the year. There was no opposition to this proposed sale.

Motion was made by Mr. McGrath to approve the Baker Draw Salvage Timber Sale. seconded by Ms. McCulloch. Motion carried unanimously.

307-4 REQUEST APPROVAL OF OIL AND GAS LEASE SALE
(Held March 6, 2007)

Ms. Sexton said we had a quarterly lease sale on March 6, 2007, held at the Department of Transportation. There were 207 tracts offered for lease covering 74,166.14 acres for a total of \$815,991.

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The average bid per acre was \$11.00, with the high bid being \$120 per acre for a tract in Hill County. The next lease sale will be June 5th. Ms. Sexton recommended approval.

Motion was made by Mr. Johnson to approve the oil and gas lease sale. Seconded by Ms. McCulloch.

Mr. Morrison said I'd like the department to address the tracts that have the Rocky Mountain Front Stipulation on them.

Monte Mason, DNRC Minerals Management Bureau Chief, said there were a number of tracts in Lewis and Clark County and those that are in that area between DNRC and FWP that we look at as the Rocky Mountain Front area, east of the Front proper. Those do have the Rocky Mountain Front Stipulations placed on them which provides for no surface occupancy unless a proposed operation is submitted, reviewed under MEPA, and approved by the Board.

Mr. Morrison said those in Pondera and Teton Counties, do they have that as well?

Mr. Mason said if they are in that area, I'll have to look at the specific ones, some do and some don't. Some of those are farther east in areas that are more historic shallow gas production.

Mr. Morrison said but everything that is in that region has the stipulation, #17, or whatever it is?

Mr. Mason said yes.

A vote was taken on the motion. Motion carried unanimously.

307-5 REQUEST FOR PRELIMINARY APPROVAL OF DNRC/GOGUEN LAND
EXCHANGE

Ms. Sexton said this is a request for preliminary approval for a land exchange located in Flathead County between DNRC and Mr. Michael Goguen of Whitefish. It involves exchanging about 440 acres of DNRC-owned land, which is public building trust beneficiary lands, for 572 acres of Mr. Goguen's land which is in close proximity. There are maps provided. The exchange was proposed by Mr. Goguen who hopes to consolidate his private land holdings. This was developed with consideration of the goals outlined in the Whitefish Neighborhood Plan. The proposal includes compensating the state by placing a deed restriction possibly on the property. This is also involved with the Whitefish recreational trail which the Board will hear about later today. The land the state would acquire has an existing conservation easement that limits development. This is the first step in the process. Because of the new rules we have governing exchanges, we do not do an official formalized appraisal until we have preliminary approval. We don't have any accurate sense of what the two parcels are worth. We also have to look into the conservation easement issue on the property we may acquire, it does allow some housing sites but we don't know how much timber management it would allow. We also have to look at what kind of deed restriction may be placed on the property we would be exchanging out of, Mr. Goguen does not wish to do any development on the property. Although according to the Whitefish Plan, the planning documents for the Whitefish area, there would be some development allowed on it, I believe it is one per 20 acres. There are still issues we have to work through. We have completed the preliminary review for the proposed exchange and there are no outstanding issues. There have been some public comments, a range of comments, those that are very supportive and those that have concerns about the increased use and issues regarding access roads. Part of the land we would exchange out of is part of the Beaver Lake/Skyles Access Agreement some years ago and there was concern about access roads. Comments

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have been received and identified and once the proposal has been refined, there will be additional public participation and additional public input will be utilized to complete an EA on this proposal. Again, this is for preliminary approval allowing us to then do our due diligence, look at issues more closely, and get a formalized appraisal of the two properties.

Michael Goguen, landowner, said I am not a developer, I am an outdoorsman and I make my money in California and spend it in Montana. The property I have acquired so far near Whitefish Lake which aggregates to about 1,000 acres I have built my house on it and that's it. No development for economic purposes. Similarly this exchange came about because of the way my property is now configured. It is roughly in circles, the 440 acres, that has had some logging done on it. I'd like to integrate that with the rest of my property. The discussion process started three or four years ago about what could be done. I was highly sensitive to the public's concerns because they were similar to my concerns in terms of what I appreciated about the area, public access to recreational state land. So that was taken into consideration in the development of the proposal. I think we have strong public support. Let me get into the details a little bit about the exchange. The idea was to find a piece of property in close proximity to the 440 which I believe we have found, these 572 acres are a little bit north on Highway 93 about 3.5 miles. I did explore exchanges with Plum Creek. That question has been asked several times. Unfortunately there was nothing they were willing to sell. We found this 572 acres very rich for recreational purposes. I understand for the next ten months we will get into the details of the appraisal process to make sure the state benefits from the exchange. That is one question I want to make clear to the Board. There has been a lot of attention on the proposal directed to the recreational aspects and the benefits to the community, but I made it really clear to the DNRC staff and I want to make it clear to the Land Board that the final proposal will show an economic benefit to the state. So from the exchange point of view we will go through the appraisals and make sure that the state is getting a net benefit on the deal, and if it isn't we'll fix that we'll find additional pieces of property. And similarly in terms of annual revenue generation capability from the land, we want to make it crystal clear that the final proposal will be very black and white. It will be a net increase in the annual revenue-generating potential for the state from the exchange. We want to make sure at the state level and the community level everyone is in agreement by the end. One final point I wanted to make on the land, the 572 acres in the proposal shows it as isolated although in close proximity to 1,000 acres of current DNRC land labeled as Stillwater. This past two weeks I have been in negotiations with a private landowner and now have a 90% solid deal for acquisition of 15 acres that essentially connects the two pieces of land. So I fully expect the final proposal will have a connected area which will then be 587 acres that will connect to another 1,000 acres of DNRC land. So the state will get a contiguous piece of state land.

Mr. McGrath said the 15 acres you are talking about, is it along the trail?

Mr. Goguen said no, its on the north side, we're talking about connecting it to the Stillwater, 1,000 acres of DNRC land to the north of the 572, north of Lupfer Road. Its actually a private parcel just on the north edge of Lupfer Road across from mine. I will point out the 572 acres I currently own already has with it an easement across Plum Creek, a little segment north of Lupfer Road to get you to that Stillwater DNRC land. Already it would improve DNRC's access somewhat, but we intend to make it more accessible with this new acquisition.

Mr. McGrath said that would be great if we could get a contiguous piece.

Representative Mike Jopek, Whitefish area representative, said as you know we've been working on the Whitefish Plan for the better part of four years now and are into the implementation stage. This particular proposal has the potential to be extremely good for conservation, to be very beneficial for recreation in our community and it also has the potential to be incredibly good for the trust. But in order for the Board

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to figure out what that potential is, it does have to do due diligence. Senator Shockley's bill that came through the House passed overwhelmingly by 98 – 2. It, in my mind, outlined some of that due diligence process, it is similar to the rules process the DNRC has but when you are considering exchanges and trades in that particular bill it was that you go to an outside appraisal, you get the methodology, you get your legal advice that way and you move it forward. You do have to do the due diligence to figure out what the benefit to the particular trust is. In the Whitefish Plan there is another element, which I particularly like and I wish the state would do it more this way, it is that any trades and exchanges happen within that community so there is no net loss for that community. In our instance, the Whitefish Plan calls for any trades or exchanges to be in close proximity to that overall jurisdiction. I'll ask the Board to also remember this is the first implementation phase and how this plays out may and probably will lead to more proposals coming forward. I do ask that the Board do due diligence and do a good job at it because this precedent-setting.

Andy Feury, Mayor, City of Whitefish, said I'd like to say as the City of Whitefish we do support the preliminary approval of the DNRC-Goguen land exchange. There are a number of issues we may want to consider as we move forward in this process. The biggest is one of the things we did in Whitefish when we crafted the Neighborhood Plan, and Director Sexton alluded to it very well, we set forth some very innovative processes that will allow us to produce outcomes that affects state lands that communities can accept and will enhance revenue opportunities for the trust. This is one of those things that will really do that. When I addressed this body in September of last year, one of the first things I said was we have a number of things that will not fit into the box like they have in the past. We're going to look at a number of transactions in the future that will be separate and related actions. While existing state law would require that we don't look at the related-ness of those actions, I think as we move forward within the context of the Neighborhood Plan it is important that we do so. To achieve all the goals we have set forward for ourselves in that Neighborhood Plan we need to build from the ground up and put the building blocks in place. I would suggest this exchange is in fact that first building block that we have. One of the parts of this, and it obviously is not in front of the Board today, but is a rather generous endowment from Mr. Goguen to the City of Whitefish for the Trail operation and the ultimate purchase of easements and the ultimate purchase of development rights on lands within the area. That will do a number of things. It will preserve the cultural, economic, and recreational values and the environmental values that are very important to the community of Whitefish. It will provide revenue for the trust and it will also allow us to give us something the community will be happy with. I would ask the Board today to give its support to the preliminary approval.

Ms. McCulloch said I have a comment concerning what we've heard today and the folks I talked to last week. My concern is with a couple of different things, we heard a lot about the recreation trail which I am very excited about but nevertheless it can't be part of the decision that this Land Board makes. It has to be a decision based upon the trust land and what the attorney's like to call the beneficiaries, which in fact are the kids in Montana. Because the trust lands help fund the schools in Montana to the tune of 10% of our budget for our schools it is really not about the Trail but it is about 145,415 school kids that benefit from these state lands. I have no problem swapping lands, I have no problem with land banking and selling lands that add into the state lands but my criteria is it has to be at least of equal value and preferably we have to get a better deal than we are giving. My concerns and questions have been whether the piece of land we are getting was a better deal than what we already had. I get concerned about collecting isolated pieces of parcels of land that are not connected to public access, to a river or a lake, or something else that would be attractive to us collecting this piece of land. I wasn't entirely sold that this piece of land did accomplish those things. But I had my staffer make sure it was a better deal. I can want a better deal because of the kids here and my concern was in getting isolated pieces of land that were not connecting our existing state land. These were my concerns as we put together this package. I'm hearing from folks today that there is an effort to at least connect this land to the existing state trust land we have

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there which would make it more appealing in that respect and less isolated without more of the benefit. And I understand this is for preliminary approval today, I don't do that lightly even though I know preliminary approval is just preliminary approval because often when the next approval time comes there is bantering about you didn't keep your promise or you didn't continue on this. So please note, I will be voting for the preliminary approval today but it does not mean at the end I will vote for the final approval. It depends upon what we find out during the research and what comes together as the final deal.

Senator Dan Weinberg, SD 2, said the district I represent is Whitefish and Columbia Falls. I think this is a good plan. I take a broad view of it because the land exchange is one thing but then the trail system that that would enable is another thing. I think long term for the state, the trust, and the community it's a wonderful plan. I have talked to most of you if not all of you about the trail system in the past and what I said then and what I feel now is that these are the kinds of recreational opportunities we want to foster in Montana. It makes sense economically, it makes sense to our quality of life, it makes sense as far as our stewardship of the land, it just makes sense. I've always been an advocate for public-private partnerships and this is about as good as it gets for a public-private partnership. I think most people understand the private sector can't do everything and the state can't do everything and we need to work together. This is a true collaboration that I think will be good at all levels. I would encourage the Board to consider it positively.

Mr. Johnson said I would appreciate it if between now and the next meeting the department could determine whether or not there is any willingness on the part of Plum Creek to negotiate access between the Stillwater section of state land and into that Lazy Creek drainage so we could connect it all. That would certainly be a plus if we could accomplish that.

Ms. Sexton said we will certainly look into that. I don't know if there has been any discussions so far.

Mr. Morrison said I want to supplement Ms. McCulloch's comments because we agree on 90% of what she said and certainly at all times we should act in ways that don't diminish the value of the trust and if possible add to the value of the trust and the yield of the trust for the beneficiaries as a matter of high priority for us. But I do want to add it is important for us not to short change the importance of our discretion as trustees when it comes to benefiting the public generally in transactions. Whether it is consideration for old growth timber, whether it is agricultural land stewardship, whether it is public access to state lands, or whether it is the impact on local communities that is increasingly being felt as we deal with some of these complex issues on the periphery of our growing communities in Montana. So, while we must always keep the beneficiaries as our principal target for all of the transactions, it is also permissible and I think beneficial for us to consider the interests of the public in the management of these lands that have such great value to people across the state. Obviously we need to make sure in this particular transaction that the trust winds up at least as good and hopefully better off than it is presently. But I do think it is appropriate to consider as part of our overall discretion the impact that this transaction would have in Whitefish, particularly in terms of public access and the overall long term management plan of that very large group of sections around Whitefish. I would like to ask if Mr. Groeschl could give us an update on the appraisal activity. It is my understanding there has not been an appraisal of the Herb Peschl place and the 400 acres next to Beaver Lake to do a comparative analysis yet but that will happen if preliminary approval is granted.

Ms. Sexton said that's correct.

Jeanne Holmgren, DNRC Real Estate Management Bureau Chief, said after we receive preliminary approval that's when we typically get into the nuts and bolts as far as how we move forward, what will be accomplished when we do the appraisals, put forth the scope of work for the appraisals, conduct the

environmental analysis, look at the rates of return (the revenues we can generate), we will look into the conservation easement on the particular property that is being proposed. So, granting preliminary approval gets us to the next step so we can start devising the appraisal, the scope of the appraisal, and the EA.

Mr. Morrison said and some recent change in our rules makes it necessary for preliminary approval to take place before the activity you just described happens.

Ms. Holmgren said yes in the past there has been a variety of different ways we have done it. The appraisal has been accomplished prior to preliminary approval and then we used those same numbers throughout the process. We just believe it is better to wait until we receive preliminary approval and until we have some agreement from the Board to move forward and then to do the appraisal after we receive that approval.

Ms. Sexton said I think also it is a timing factor. If you have the appraisal done too early the price of land appreciates. So the closer to the end it is done the more accurate values we have.

Lt. Governor Bohlinger said the benefit to the people of the State of Montana can be measured in a number of ways. One, it is easy to calculate dollar on dollar returns but Representative Jopek referenced something that goes beyond just the dollar to dollar return and that is it is a good conservation provision and it expands recreational opportunities for Montanans. I think we as Montanans who enjoy an active outdoor life would find a great benefit expanded by hiking trails. I would encourage our committee to move forward in a preliminary way to increase additional studies in which we can nail down the dollar to dollar return on investment.

Mr. McGrath moved to grant preliminary approval to the DNRC/Goguen land exchange. Seconded by Mr. Johnson. Motion carried unanimously.

307-6

RIGHTS-OF-WAY APPLICATIONS

A. Standard Rights-of-Way Applications

Ms. Sexton said we have a number of historic as well as utility installation applications this month. We have three historic road applications one each from Beaverhead County, Richland County and Flathead County, as the counties move forward with the effort to get easements on the county roads. We have an historic private road with the Fraser Hereford Ranch. I want to note on this one, on page 24, that this access is specifically for ranch activities, management activities, this is not all purpose access. If they come back and want to have access for subdivision or anything like that they would have to go through the process again to gain full access. The Board may have received some letters regarding the Fraser Hereford Ranch application. The others are standard. We do have some reciprocal access that we will address separately. This month we have #13372 through 13391 from Beaverhead County for an historic public road; #14108 from Flathead County for an historic public road; #14109 from the City of Billings for two 12" sanitary sewer mains; #14110 from Blackfoot Telephone Cooperative for a buried fiber optic telecommunications and copper cable; #14111 from the Fraser Hereford Ranch for a private access road for conducting normal farming and ranching operations; #14112 from Central Montana Communications Inc. for a buried telecommunications cable; #14113 and #14135 from Southern Montana Telephone Company for a buried fiber optic and copper communications cable; and #14114 through 14133 from Richland County for an historic public road. Ms. Sexton requested approval.

Motion was made by Mr. McGrath to approve the rights-of-way applications. Seconded by Ms. McCulloch. Motion carried unanimously.

B. Goat Squeezer Cost share

Ms. Sexton said this is for a Forest Service cost share summary and the beneficiary is Common Schools. We have ongoing efforts with the Forest Service to exchange access and the Board has a description of the access we will be giving and acquiring. We do a balance sheet over a five year period to balance this out so as you see with this one, this is primarily from our Swan Unit, the Goat Squeezer Cost Share. For this one the federal government will owe the state about \$85,000 and this will go into the Master Cost Share balance sheet. There is a description in the Board's attachment of the benefits to the state because this expands the access to about 1,280 acres for the state. We've looked at the documents, the exhibits and the benefits to the state and I recommend approval of this Cost Share Supplemental Agreement #17.

Mr. Johnson said I want to make sure I understand, the federal government owes the state \$85,553, that simply will be a ledger transaction, there will not be any money changing hands.

Ms. Sexton said at the end of five years there may be depending upon how things balance out.

Mr. Johnson said where are we in that five-year period?

David Groeschl, DNRC Forest Management Bureau Chief, said the balance sheet normally swings back and forth between the Forest Service owing the state and the state owing the Forest Service. Right now the state owes the Forest Service approximately \$200,000. This agreement will help reduce the amount we owe the Forest Service. Plus there is a road that is scheduled to be built that will also give us credit for about \$130,000 on that balance. So you can see how the balance sheet with the Forest Service moves back and forth. After five years, which in the next couple of years we'll see where the balance is and if there needs to be a payment to zero it out.

Mr. Johnson asked when does that five year period expire?

Mr. Groeschl said typically we have been doing it like a rolling five years with the Forest Service but every couple of years we have a meeting with them to determine if we need to pay off the balance.

Mr. Johnson moved approval of the Cost Share Supplement #17. Seconded by Mr. Morrison. Motion carried unanimously.

C. Felska-Kaiser Reciprocal Access Agreement

Ms. Sexton said this is a reciprocal access agreement with some private parties north of Helena in Lewis and Clark County. I understand there have been some changes since our staff meeting last week. There is a map attached which shows clearly that the access to be exchanged will be a benefit to the state.

Mr. Groeschl said there is a change to the agenda item and I apologize for the late change. If you turn to the second page of the agenda item 307-6C, under Section 8, Recommendation or Action at the bottom of the page the first sentence says, "the department is recommending waiver of the 1% conveyance fee." That needs to be struck. We are not waiving the 1% conveyance fee. The landowners, under the original agreement with us, have agreed that since this reciprocal access agreement is under the new policy these properties if they are sold in the future will be subject to the 1% conveyance fee. In addition, they have agreed the state would owe them under this reciprocal agreement for the land and road value difference.

We would owe them \$150,000. They have agreed to waive that difference as well and they have granted the state motorized public access across their lands. In every case here we are benefiting as the state by gaining motorized public access, by having them waive the \$150,000, and the properties are subject to the 1% conveyance fee. That is the change that has occurred, that we will not be waiving the 1% conveyance fee.

Ms. McCulloch asked why the state was waiving the \$150,000.

Mr. Groeschl said the landowners have, under the original agreement, agreed up front after becoming aware the property under the new policy would be subject to this new 1% conveyance fee and they agreed. The department misinterpreted that when the agenda item was drafted. The landowners agreed early on that they would be subject to that fee, knowing the conveyance fee isn't charged until the property actually sells and they were okay with that. Whoever the purchaser is will bear that 1% conveyance fee.

Motion was made by Ms. McCulloch to approve the Felska-Kaiser Reciprocal Access Agreement. Seconded by Mr. McGrath. Motion carried unanimously.

Mr. Johnson said it is very generous of the Felska's and the Kaiser's and I want to express my appreciation for their willingness to work with us in this manner.

INFORMATION ITEMS

307-7 CITY OF WHITEFISH/DNRC TRAIL RUNS THROUGH IT

Ms. Sexton said this is part of the Whitefish Plan and I think we have had one, if not two, other information sessions regarding the Trail because it is precedent-setting. We've had staff and attorneys look and try to come up with an approach that would work here not only in Whitefish but in other areas. The beneficiaries for this Trail and the areas it will go through, include the Normal School, Public Buildings, MSU, School of Mines, Common Schools, and the School for the Deaf and Blind. Our 13,000 acres in Whitefish are varied as far as the trust beneficiaries. There is a map provided for the Board members which is a good map of where the Trail will be going. This will go through an administrative process, we will do a Land Use License (LUL) with the City of Whitefish, we're looking at \$200 per mile for the License, we will also be gaining a percentage of a fee the City will charge for access to this Trail. It is an approach or strategy that will work well not only here but perhaps for other recreational trails we might be using across state land. So the local communities have the recreational opportunities but yet the trust benefits from the use of state land for these recreational purposes. The Land Use License is an internal process and the department can grant the License, it does not take Board approval.

Mayor Andy Feury said its been a relatively slow process to move along but we're getting a lot of great things done. As Director Sexton said we are entering into an Land Use License. The reasons we chose that route are many. Working with Mark Phares, the DNRC attorney from Missoula, our attorney, and working with the DNRC folks in the local office, particularly Bob Sandman and Steve Lorch, we really wanted to come up with a way that would make it financially feasible for us to do two things. One, to help DNRC with the problem they have with the existing management of the trail system that is there today, and also to make it economically feasible for us to build a trail. One of the concerns we had originally was we thought we'd have to go out and purchase a 30-foot wide strip of land that went for 10 or 12 or 20 miles or however far it ultimately ended up being. Obviously if we had to do that it would be a very expensive up front cost for us. In doing so we would probably deplete any capital reserve we had

and not be able to ultimately build the trail, maintain it, or operate it over time. The LUL came about for a number of reasons and the biggest one was probably that. Secondary to that with the LUL is it also allows us to have a trail system that exists that doesn't provide a permanent encumbrance upon the land. Which is good from the DNRC's perspective in terms of ongoing timber management and other activities they would have, it is something that can move around. We built a lot of things into that LUL which would allow that to happen with adequate notice for the City and certainly adequate notice to the DNRC if we were going to make any changes. It also provides an ongoing and increasing revenue stream. As the Director said, we are looking at a license that would be purchased from the City of Whitefish, a portion of that license, roughly 70% would stay with the City, 30% would go to the beneficiaries. Its always well and good to look at that on the front end and say we are going to sell "X" number of licenses and I think in the agreement we put our money where our mouth is and we agreed to a fixed dollar amount in the first year, a increased dollar amount in the second year, and an increased dollar amount in the third year knowing we can be very successful in this program. But it does a number of things. For the first time for a project like this, it will actually show what the revenue stream is. We all talk about the value of recreation to the trust, the value of recreation to the communities, but we are actually going to have a monetary number here. That is something we will be able to look at at the end of each year and will be able to adjust based upon the coming year, and that is one of the things we built into the LUL, if we can increase or decrease that. Obviously we think we will be very successful but we've also left ourselves enough wiggle room in there that if in the first few years it is a little slow getting going we won't be hung out to dry if we can't meet those numbers. Overall, this is a very important step in providing the trail system which is one of the key elements of the Whitefish Neighborhood Plan. Again, it is like all things in the Plan, it is part of an overall plan, it is part of many transactions that will happen in the future and will allow us to hopefully secure as lands are traded, exchanged, or potentially sold, and it will allow us to secure access for the public over time. I look forward to a very successful project. Our goal would be if things work right that we could maybe see some construction this fall at least on a limited portion of the Trail.

Lt. Governor Bohlinger asked how many additional miles of trail would be provided if this happens?

Mayor Feury said we are looking at roughly ten miles in the beginning. That is essentially the trunk line that would run up through Spencer Mountain and up through the Beaver Lakes area. One of the things we have built into the LUL is the ability for us on an annual review period to go ahead and add to those trail miles which we would hope we could do relatively quickly over the years because it does a number of things. One, it makes the trail system better and it also provides more revenue for the beneficiaries because for each mile we add we are going to increase our fee each year.

Senator Dan Weinberg said I just wanted to mention there is some precedence to this, and that is the City of Boise, Idaho. Some of us have gone to Boise to see their trail system, they have about 100 miles of trail, and it is much more complicated than what we are doing because they go through public lands, BIA land, private land, it's a patchwork. But it is been incredibly successful there. People move to Boise so they can use that trail system, its become such a focus of pride to that City. This is the kind of thing we are trying to accomplish to create something that is unusual and wonderful and that people will be very proud of. The man who put it together in Boise came up to Whitefish and met with many of us, stayed a couple of days, and it was very informative and helpful. That is part of our guide for this system.

307-8 SB 452 AND SB 534 UPDATE

Ms. Sexton said this follows very well on the last item, as you know things are changing particularly in Western Montana. We're losing some of our traditional landscapes and certainly subdivision and development is on the increase. This is changing our traditional uses and our way of life and also our

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recreational opportunities. I think the state is in a position to play a role in perhaps maintaining or retaining some of our traditional uses as well as access that Montanans hold so dear. There are also issues such as fire suppression and maintenance infrastructure and so on that as lands are converted to uses other than their traditional uses it would certainly have an impact to us as well as to local governments. There are two bills out that could directly have impacts on state trust lands. The one bill, Carol Williams' SB 452, is directed at maintaining working forests, ranches, farms and watersheds. This sets up a structure of a commission that could oversee potential state or other contributions that could be made through loans and grants to local communities similar to Whitefish or others who want to maintain their working landscapes. Again, all of these state lands around Whitefish for the most part will be retained as working forests. We do have a very active timber industry in Montana, although it is facing a lot of challenges because of this conversion of forest land. This bill from Senator Williams sets up a structure whereby funds that come from the state through matching loans and grants could be issued to local communities for acquisition or for conservation easements with a coordinated effort with other entities.

The second bill, SB 534 sponsored by Senator Wanzenried, did fail in the Senate with a tie vote. As we've moved along there have been some concerns about the conversion of forest land and this would give us some options to purchase more state trust land as lands became available. Ms. Sexton handed out ownership maps in Western Montana and said it shows there is a good bit of private forested land in Western Montana, primarily Plum Creek Timber Company. As conversion occurs there are interspersed parcels, sections, with state trust land particularly in the Swan area and the Thompson River area, which if that would occur it would change our timber management, change our access, it would substantially change not only how we operate but also what the citizens of Montana have access to. It would also change opportunities for the timber industry. This was an effort to have some funding available for the Board to look at particular parcels and purchase more state trust land. I know Senator Wanzenried sent us a Memorandum, and I think the Board has a copy, and the Senator is here this morning and would like to visit with you about this.

Senator Dave Wanzenried, SD 49, said Director Sexton has done a good job outlining what the issues are with respect to the land. I want you to look at the map she handed out to you, it is oozing in red and the red could be an opportunity or it could be a problem for the future of the state. Director Sexton said correctly that SB 534 actually tied on a vote in the second reading in the Senate on the very last day we were in session. By the time I got home I had over 300 e-mails and a lot of phone messages saying you need to do something about that. There is not much we can do now because the train has moved on. But I think I have a responsibility because I was directly involved in this effort to let you know the people who contacted me aren't tree huggers. You'd think because I am from Missoula only tree huggers would contact me, but in fact people from all over the state contacted me concerned about what might be happening here. I know there is an effort being made through Senator Williams' bill to do a comprehensive study about the landscapes and the vistas and the corridors we take for granted in Western Montana. But having done some research prior to the introduction of the bill and especially after, I have to tell you in the next several years, literally between now and when you might meet three years from now, hundreds of thousands of acres could be sold. Is that a good idea? I don't know but I think the state has a vested interest to take a look at the access that might be affected, the way of life that might be affected with the transfer of property from public ownership. We are talking about Plum Creek here let's not make any mistake about it, moving that land from where it has been essentially privately owned and harvested and managed as private timber lands. Everybody in this state has benefited because Plum Creek has been a good corporate neighbor, they have allowed access to their land which in turn provided access to other lands beyond that. You will notice that on the map, particularly in the Swan where it is checker boarded. When we think about Plum Creek we always think about it in terms of the Swan, but I want you to look very carefully at the other areas. There are hundreds of thousands of acres that are going to be affected by these decisions. In fact, the land is going to be sold on a retail level now, so

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literally anybody in the U.S. who wants to come out and have a piece of our great state can do that. My concern is our way of life is going to be affected by this. When we think about Plum Creek lands we're thinking about lands that have been completely harvested but that is not the case with many of these lands. In fact it is not economically feasible for Plum Creek to harvest these lands and because of its size it has a huge competitive advantage over the small logging operations when other private lands come up for sale for bid. I think the Board has a responsibility to take a look at the lands that are there because of the opportunities they are going to present to expand the public ownership and yes, increase the sustained yield. Which is going to be a win-win situation not only for outdoor recreationists but for the children of our state both now and into the future. That map underscores the need to take a careful look at what is going to happen to the communities that have been so dependent upon logs and fiber from the forests. There is one thing people will tell you that we don't want to have any more ownership in the public domain. And interestingly enough the bill that I introduced that failed by a tie vote allowed for a sale of land in Eastern Montana or anywhere else in the state in the equivalent amount the Land Board might purchase. The bill would have authorized the creation of a fund and a separate appropriation would be required to fund it up to \$100 million for the lifetime of that fund. That's a lot of money. This is the first time in recent memory that this much real estate has been available on the market. The last time we had something similar to this was in the early 1980s when the Milwaukee Railroad decided to leave the state and left us with huge tracts of land to be purchased. And the state decided from a policy standpoint not to participate at a very high level. I think all of us will now admit that was probably a mistake. I don't want to stand here two years from now and say 100,000 acres have been sold, 150,000 have been sold, we need to do something. Because my sense is if we are truly sincere about telling people like Plum Creek we want to be in line when the land goes to market we need to have some money available. We don't. The land banking program doesn't provide nearly enough money to be a serious player in this. I am not suggesting for a moment that every single acre on that map you have is going to have to be purchased by the state. But I think the Board ought to do a couple of things. One is to do a careful inventory of the lands that are available and to actually have a working relationship that is more public than it has been with Plum Creek to find out what its intentions are for the short and the long term and decide from a policy standpoint which of these lands fit within the general framework of the lands that are managed by the state. Knowing full well that for every acre of land we buy in this area and probably elsewhere we would commit to sell a corresponding amount of land elsewhere. That would be primarily in Eastern Montana. For those of you that follow this closely, there was discussion that we were going to turn Western Montana into a parkland. I want to tell you something, if we don't do this Western Montana will become a western parkland owned by large out-of-state landowners who will fence the property off and gate it. Some people will say that is good, we are going to bring a lot of property tax revenue into the state. But I have to tell you from a study that was done in Flathead County, done in the last couple of years, it is extraordinarily expensive to service privately-owned property that has been timberland. I think I am correct about this, but right now wild timberland for every 25¢ that is invested, the state gets about \$1.00 return. After that land is developed because of fire suppression and all the other costs that are associated with it, local governments, especially Missoula County and to some extent Lake and Flathead Counties, would be faced with staggering costs to service these areas where for a \$1.75 expended the local government would get \$1.00 back. So its not a net gain in terms of real estate property taxes to the local government entity or the local school districts. I think the state has a responsibility, and I think hand-in-hand with that study, what needs to be done in a more public setting than has been done so far is the state needs to decide if it is going to be serious about being at the table when these and other lands are for sale and to actually do something about it in the short term. It is going to cost money to do it. And I would submit to you that deciding that it is going to cost money is the best thing we can do because the investment will more than pay for itself. I feel very strongly about this and I want to tell you its not about those of us in Helena, its about the hundreds of people that sent e-mails, multiple use, logging families, people that have had access for picnics, outdoor activities with their families and those that cross Plum Creek lands to get to their favorite hunting and snowmobiling areas. I think if we begin to explore this

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we will find the people of the state say it is a good investment to invest money in these lands for all the values we treasure so much being Montanans.

Mr. Johnson said we've had some criticism from some quarters with regard to our activity in the land banking program and the impact it has on the tax base in locales where we acquire land. Of course we try as best as we can to balance that. It is not an acre-for-acre trade off but it would seem to me that part of the impact of this concept you are speaking to could potentially be a substantial reduction to the tax base in some locales. Have you discussed ways to approach that?

Senator Wanzenried said I will tell you this, you will have to look at the fiscal note that accompanied the bill because you'd be surprised about the number of dollars. But I would argue to you if we are really serious about this the state might well decide it should take a look at a revenue-sharing program to go hand-in-hand with this. There are a lot of other investors out there who want to invest in the public trust, that have made monies available to help offset that by putting our money into an escrow account to help pay down the differences in real estate. There is an important trade off here. For the number of dollars that are at stake for the property tax base there are probably millions of dollars at stake for the very things we take for granted in this state that could be gone in a heartbeat. We could see thousands of acres fenced off with no access and I think there would be a reduction in the attractiveness as a destination point for people who want to recreate and the money that is infused into the communities by virtue of doing that. It needs to be examined and I think it is one of the issues I am going to work on regardless of the amount of interest that is generated at the legislature or in any other venue including here to get answers to those questions because that is a very good question.

Ms. Sexton said I would add to that in Senator Williams bill there are categories to which funds could be put in as part of payment in lieu of taxes. So if a grant comes in from a community that they would like to protect some particular lands, or from the state – it has to be a public entity – then payment in lieu of taxes is one thing these funds could be used for. Also, another issue is the wildland-urban interface. After this last fire year we did an assessment and the majority of our fires were in the wildland-urban interface including those in Eastern Montana as well as Western Montana and they usually cost us 60% more because we spend so much more time protecting people's homes than we do fighting the fire. That is an issue particularly for the state when we're looking at paying this year the gross costs for firefighting was \$60 million.

Mr. Morrison said Senator would you tell us the status of SB 534 right now and also distinguish it for us if you would from the other piece of legislation that would have used surplus revenue from the trust to acquire additional land for the trust?

Senator Wanzenried said the bill I introduced, SB 534, died in a tie vote in the Senate. Technically it is not dead because we didn't have the votes to indefinitely postpone it. Senator Williams' bill, SB 452, has been referred to the House Natural Resources Committee and I am not sure if the hearing has been scheduled. The difference between the two bills is important. The way the bill was introduced had to be amended because we were actually looking at the possibility of converting bond investment into real estate by taking a certain amount of that and investing it. Some people said there was a Constitutional problem with that. So the bill was amended to set up an account, an account only for the lifetime of \$100 million to be expended. That bill did not pass. I need to emphasize that bill did not appropriate or transfer any monies into that fund, it was simply a fund that would be created and a separate legislative appropriation would be required either now or into the future. Senator Williams' bill is a more comprehensive view of this issue, in addition to these lands on the sale block from Plum Creek there are a lot of other lands that are going to be available as well. That is going to take a more deliberative approach than, frankly, I would propose to do. To take a look at what we want Montana to look like 50 years from

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now Senator Williams uses the analogy of when her grandparents came to Montana they came through what is now Yellowstone National Park and she, Senator Williams, listened to the stories they told her about what Yellowstone National Park looked like. Had we not had the foresight then, that may have been commercially developed and we wouldn't even have that frame of reference either. There is going to be extraordinary pressure to do something with this land and my hope is there is going to be enough interest that when the investors of Plum Creek say sell the land its worth more to us being sold as real estate then for timber value that Montanans have a place at the table to say we are interested in selected tracts. Frankly, that's what my bill attempted to do.

Lt. Governor Bohlinger said we as Montanans have chosen to live here simply because we enjoy the landscape. We enjoy the quality of life that has been made available to us through the recreational opportunities whether it is the mountains or in Central or Eastern Montana. We enjoy the landscape we enjoy fishing and hunting. Preserving that opportunity for future generations I think should be a great concern to the members of the Land Board and the members of our Legislature. When Plum Creek sells these properties they are going to be selling them to the highest bidder and oftentimes that will be people other than the State of Montana. I have a personal interest in seeing future generations are given the opportunity to hunt and fish and recreate in some of the most scenic and beautiful properties of our state. Would you share for us some of the critical comments made by the opponents to your bill? I see it died on a 25-25 vote when it reached the Senate floor. What possible arguments could these people bring forward?

Senator Wanzenried said I believe the principal concern was that it was late. The bill was introduced late, heard late, and got off the floor late when there are a lot of other pressing issues there. It is in fact a departure from existing policy to do something like this and that was the primary criticism that was leveled against it. I think there was a lot of misunderstanding that we were committing by virtue of passing this bill, committing the state to spend up to \$100 million when in fact it is just the opposite. It creates an opportunity to spend from zero to \$100 million depending upon legislative appropriations. The last part of that was people were concerned about converting Western Montana into a parkland and somehow letting Eastern Montana go. The bill strikes a very good balance and in fact the people you would expect to oppose the bill, the Farm Bureau and the Stockgrowers Association, supported the bill the way it came to the Senate floor with the amendments on it. I think there is an opportunity that is ripe here, not only because of what has been done in Helena, but because of the fact we have gotten the public's attention outside of Helena, not just in Western Montana by the way. I had just as many e-mails from Billings as I had from the Flathead. I had just as many e-mails from Hamilton as I did from people in Lewistown. Because those people migrate to the western end of the state for a variety of reasons that those of us in the western part of the state take for granted every day. If we are not careful I think we are going to find areas that are fenced off, much the same way if you go to the coast now. You have a hard time getting to beach front property. This land is the next beach front property. Hopefully not because of an earthquake giving us beach front property but because it is pretty clear that people have found Montana and they want a piece of it and they can afford to come here to buy off large sections of it and prevent all those uses we take for granted including infusion of money into our communities.

Lt. Governor Bohlinger said we know land values today will appreciate greatly in future years. We know that land values in the mountainous regions that Plum Creek owns will escalate more rapidly than land values in Eastern Montana. In the public interest we should try to secure those as best we can. I congratulate you on bringing forward a splendid idea I am sorry there wasn't support for it in the Senate.

Senator Wanzenried said I would only ask that this issue receive some attention on an ongoing basis whether or not it is through public hearings or simply continuing to include the public in something that is critically important to the future of the state.

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Ms. Sexton said there is a representative here from the Blackfoot area, Hank Goetz, who has been dealing with issues in the Blackfoot River Valley. They have had an ongoing effort there and Mr. Goetz would like to share them with the Board.

Hank Goetz, Blackfoot Challenge Lands Director, said I'd like to support Senator Wanzenried's and Senator Williams' proposal. As you may recall from the testimony on the Miller/DNRC land exchange a year or so ago, the Challenge and the Nature Conservancy of Montana have formed a rather unique partnership to purchase up to 88,000 acres of former Plum Creek land and then resell it to a mix of private and public entities according to a community-based plan. To date we have purchased about 88,000 acres and resold about 27,000 acres, 2,400+ to the DNRC and another 3,800+ to FWP. The purpose of our Blackfoot Community Project is very similar to those proposed by the two Senators, and that is to conserve the rural lifestyle and natural resources of the Valley. I think specifically we want to try and help the private ranchers remain viable, try to manage the forests in a sustained way so we can provide a flow of raw materials to our local mills, and then preserve the access and recreational opportunities that these corporate timberlands have traditionally provided. We'd also like to try to protect the wide range of wildlife, animal and bird habitat that really makes the Blackfoot Valley a special place. I have to say the DNRC has been a very valuable partner in our project. The folks in the Valley have actively supported the DNRC acquisition of the old Plum Creek lands. However, at present the tools we need to work on these cooperative projects are limited at the state level and funding of the federal programs, such as the Land and Water Conservation Fund, are really at historic lows. Although there are a couple of federal pass-through programs administered by FWP (the Forest Legacy and Habitat Conservation Fund) which have restricted application and unfortunately minimal funding. Although I may be a little prejudiced, land exchange is not always the answer to some of these things. We have used land banking and used it successfully. I think it is a great program that should be continued, however, much more is needed. I believe that proposals such as those of Senators Williams and Wanzenried would provide an excellent tool for those folks around the state that are trying to preserve the working landscapes and those that help make Montana "Montana."

Motion to adjourn was made by Mr. Morrison. Seconded by Mr. Johnson.